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A CHALLENGE IN LEGAL EDUCATION

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It has been said that the character of the law schools determines the character of the legal profession. If this is so, it is high time that law schools bestir themselves along new lines, or more energetically along old lines, for it can hardly be said that all is well with the legal world. Indeed, in recent years, it seems quite clear that something has gone wrong somewhere, partly perhaps in the instructional policies and practices in the law schools; and the cost to society, to lawyer as well as layman, may well give us pause. For one thing, the tradition that the practice of law is a public profession carrying with it important responsibilities to society, though once an effective regulating-agency,¹ is slowly dying, and only a major operation can save it. Moreover, notwithstanding his great skill in what may be called the strictly legal and the business angles of practice, the leader of the bar today is, for reasons hereinafter indicated, less likely to be a well rounded lawyer than his predecessor and less likely, in his capacity as an officer of the court, to use his ability and opportunities to help bring the law into harmony with changed economic and social conditions.² Then, too, among other causes for concern, the ordinary layman has lost much of his faith in the lawyer and not infrequently prefers to let a wrong go unredressed rather than take a chance on the sort of justice he so often sees meted out at the hands of lawyers in the courtroom, "justice" according to what has been called the sporting

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¹ Cf. Simpson, *The Function of the University Law School* (1936) 49 HARV. L. REV. 1068.

² See Stone, *The Public Influence of the Bar* (1934) 48 HARV. L. REV. 1.

theory of a lawsuit, regarding a trial as a game in which the judge is little more than an umpire — “a game in which knowledge of the rules and facility in applying them are to be rewarded, and ignorance of the rules or awkwardness in their application is to be penalized. The client and his interests are forgotten — ‘the play’s the thing.’”³

Of course the tendency to resort to the so-called “sporting theory” of a trial, to discuss first what is undoubtedly one of the most pernicious tendencies in present-day practice, is nothing new. When America was dominantly rural and, in general, without means of public entertainment other than the highly fascinating game of intellectual swordplay that went on in the courtroom, perhaps there was a semblance of excuse for occasionally allowing the trial to lapse into a battle of clashing wits — perhaps. But, be that as it may, the modern layman, who can find better entertainment at the movies or by radio, is, as a potential client, if not otherwise, voicing dissatisfaction with this not-infrequent angle of litigation, seeing, as he often does, that it not only has no necessary relation to the merits of the controversy but, by diverting the jury, or by getting “error” into the record, sometimes results in a miscarriage of justice.

It seems too obvious to justify argument that there is involved in this tendency much more than the lawyer’s individual interest in self-protection; there is involved, also, the public or social interests in making a lawsuit a socially desirable method of settling disputes. And there is involved, in this latter regard, the lawyer’s responsibility as an officer of the court in making a trial an effective means of achieving the end of law — a means of securing the more important interests involved in a controversy, with a minimum sacrifice of conflicting interests.⁴ Accordingly it may be

³ The quotation is from *THE LAW OF EVIDENCE (SOME PROPOSALS FOR ITS REFORM)* by Morgan, Chafee, Gifford, Hinton, Hough, Johnston, Sunderland, Wigmore, at 5-6. Cf. *WELLMAN, GENTLEMEN OF THE JURY* (1924) 143: “How often have I seen adroit counsel succeed in completely diverting the attention of an entire panel of jurymen by starting a dispute upon some puny side issue, which in reality had nothing whatsoever to do with the merits of the case. And yet it may be so cleverly handled that it dwarfs every other question in the case.

“I could name lawyers at our Bar who almost invariably adopt this method in every desperate case they try, and succeed with it to a most exasperating, if not alarming, extent.”

⁴ As to the end of law, see Pound, *The End of Law as Developed in Legal Rules and Doctrines* (1914) 27 *HARV. L. REV.* 195; Pound, *The End of Law as Developed in Juristic Thought* (1914) 27 *id.* 605; (1917) 30 *id.* 201; POUND, *AN INTRODUCTION TO THE PHILOSOPHY OF LAW* (1922) 59-99.

stated without fear of successful contradiction that this angle of a lawsuit, if it was ever of organic use, has become a sick appendix, seriously impairing the health of the profession, and it must be removed. But who shall perform the operation — the law schools, or the bar, or both?

Which raises the question: What should be the objectives of a law school? Is a law school merely a trade school — a place where trained legal-technicians aim to promote greater skill in the art of winning lawsuits and in otherwise handling "legal tools"? Or is it something more — an institution devoted to preparation for a profession, in which preparation must be included a comprehensive inculcation of a knowledge of the social responsibilities involved, and an understanding of what happens to the profession, and to society, in case of failure to discharge these responsibilities?

Of course we in the law school world have not consciously aimed at accent on skill, without stress on social responsibility. But by and large, for the past few decades, we have been so busy accenting proficiency and devising better methods of doing it that not infrequently the idea of law as a public profession, with its hard-to-impart social implications, has been all but pushed aside in the process. And now, having sown the wind (with good intentions, howbeit), we are about to reap the whirlwind. Perhaps we had better build a cyclone cellar — or at least bolster our superstructure.

Mr. Justice Stone, speaking from the vantage point of a judge who has been a law teacher, has recently indicated the need for a new buttress in the educational process. He says, in a comparatively recent address:

"It is not too much to say that . . . [the law schools] have worshiped the proficiency which they have sought and attained to a remarkable degree. But there is grave danger to the public if this proficiency be directed wholly to private ends without thought of the social consequences, and we may well pause to consider whether the professional school has done well to neglect so completely the inculcation of some knowledge of the social responsibility which rests upon a public profession. I do not refer to the teaching of professional ethics. I have no thought that men are made moral by the mere formulation of rules of conduct, no matter how solemnly bar associations may pronounce them, or that they may be made good by mere exhortation. But men serve causes because of their devotion to them. The zeal of the student for proficiency in the law, like

that of his elder brother at the Bar, comes from a higher source than selfishness. It is devotion to his conception of a useful and worthy institution. But that conception is a distorted one if it envisages only the cultivation of skill without thought of how and to what end it is to be used, and the question what the law schools have done and can do to make that conception truer is one to be pondered and to be answered. It is not beyond the power of institutions which have so successfully mastered the art of penetrating all the intricacies of legal doctrine to impart a truer understanding of the functions of those who are to be its servants. That understanding will come, not from platitudinous exhortation, but from knowledge of the consequences of the failure of a profession to bear its social responsibilities, and what it is doing and may do to meet them."⁵

It seems worth while therefore to sketch roughly some of the salient features of legal education in the United States, with a view to throwing some light on the question whether the change in methods and objectives in the educational process has had any causal connection with the changed practices and attitudes of the bar, and particularly with a view to throwing light on the immediate question whether a new emphasis in legal education holds a real hope of minimizing the evils that are upon us and, to a degree, will continue to be with us.

Until about a generation ago, legal education in America was for the most part by the apprenticeship method, that is to say, the applicant "read law" in the office of some member of the bar, commonly accompanied him in the trial of cases, and otherwise participated in what may be called the clinical method of learning

⁵ Stone, *supra* n. 2, at 13, 14. The importance of various angles of this general problem has been noted by many. See e. g., Oliphant, *The Future of Legal Education* (1929) 6 AM. L. SCHOOL REV. 329; Cuthbert W. Pound, *Legal Education and the Education of the Lawyer* (1930) N. Y. S. B. A. 231; Turner, *Changing Objectives in Legal Education* (1931) 40 YALE L. J. 576; Hanna, *The Law School as a Function of the University* (1932) 10 N. C. L. REV. 117; Pound, *What is a Good Legal Education?* (1933) 19 A. B. A. J. 627; Frank, *Why Not a Clinical Lawyer-School?* (1933) 81 U. OF PA. L. REV. 907; Gardner, *Why Not a Clinical Lawyer-School? — Some Reflections* (1934) 82 *id.* 785; Stone, *supra* n. 2; Llewellyn, *On What is Wrong with So-Called Legal Education* (1935) 35 COL. L. REV. 651; Clark, *Legal Education in Modern Society* (1935) 10 TULANE L. REV. 1; Simpson, *supra* n. 1; Hutchins, *Legal Education* (1937) 4 U. OF CHI. L. REV. 1.

Though the writer may not have much that is new to offer on this general problem, the failure to date to find a solution and the admitted importance of finding one, may serve to justify one more effort to contribute something to the cause. At any rate, it is quite evident that without the continuous combined efforts of many nothing even approaching a solution can be expected.

law. And so long as the lawyer was, as he was in the early days of the profession in America, the trusted adviser of his community, the person to whom the community in general looked for leadership — so long as he considered himself such and, as such, bound by the tradition that law is a public profession carrying with it certain social responsibilities, that method of training for admission to the bar was, at least in conjunction with some formal instruction, a very satisfactory method of training. But, as has been pointed out by others, the conditions of effective legal training by the apprenticeship method, or at least by the apprenticeship method alone, no longer exist in the United States and have not existed for many years.⁶ Whereas the lawyer of a few decades ago was engaged in the main in representing clients in every walk of society so that he was in a very real sense a representative interpreter of that society,⁷ with time and zeal to perpetuate the traditions of his calling, the successful lawyer of recent years, largely because of the modern rise of big business, with its ever insistent demands for the best legal talent and its ability to pay for it, was and is as likely as not to be representative only of such business and, among other things, to be too busy to give much thought to training an apprentice, particularly to training in what may be called the ethical and the social as distinguished from the strictly legal and the business aspects of practice.

It was only natural that under these conditions legal education in the United States should fall into the hands of the law schools. And during the earlier stages of this transition Mr. Justice Holmes, speaking of the schools and their function in the educational process, warned that "the business of a law school is not sufficiently described when you merely say that it is to teach law, or to make lawyers. It is to teach law in the grand manner, and to make great lawyers."⁸ But how far have the schools heeded this warning?

For present purposes it is only necessary to consider, and quite briefly, what may be called the "standard" method of legal education that has prevailed in most first-rate law schools for a generation or so. Under this method (the case method which was in-

⁶ See, *e. g.*, Gardner, *supra* n. 5.

⁷ Cf. Stone, *supra* n. 2, at 6.

⁸ HOLMES, *COLLECTED LEGAL PAPERS* (1920) 37. The quotation is from an address delivered in 1886. Holmes' next sentence, beginning a new paragraph, was this: "Our country needs such teaching very much."

troduced by Langdell in 1870),⁹ the teacher's usual conception of legal instruction, apart from certain more or less recent departures, begins and ends with the supposedly well-defined task of discovering and imparting "legal knowledge", that is, a knowledge of the various rules and other precepts that courts use (or purport to use) in deciding cases;¹⁰ it concerns itself for the most part with a study of the past—with an analysis of precedents—with the accent on the language technique of the judges; it generally disregards as extra-legal the more or less inarticulate "ideal" elements that consciously or unconsciously influence courts;¹¹ it concerns itself but little with the increasingly complex relation of law to the economic and social forces out of which it arises and which, in the long run, give it growth or death; it treats law largely as if it were a thing apart—as if it were unrelated to other social sciences. And, in his zeal for greater proficiency in

⁹ For a brief account of the Langdell method and influence, see WILLISTON, *SOME MODERN TENDENCIES IN THE LAW* (1929) 112-115.

¹⁰ The primary function of a law school is, of course, to give the student the best possible preparation for the practice of law. But what is law—what is that law which it is the business of a law school to impart to the student? Is law merely that body of rules and other precepts which influence courts and administrative tribunals in deciding cases? These precepts, which may be called the "strictly legal" elements in the judicial and administrative process, are, no doubt, the lawyer's chief tools. But there is, at the teacher's hand and at the lawyer's hand, at least one other kind of tool that deserves to be classed as "legal". Some mention is made of it in note 11, *infra*. Moreover, as Dean Pound has so aptly observed, the common law "is essentially a mode of judicial and juristic thinking, a mode of treating legal problems rather than a fixed body of definite rules." POUND, *THE SPIRIT OF THE COMMON LAW* (1921) 1. And one of the most important functions of a law school is to teach this mode of thinking—to develop in the mind of the student a technique of thinking.

¹¹ As to these ideal elements, Dean Pound says: "The existence of such ideals as legal materials—as one authoritative form which legal materials may take, or as sources in Professor Gray's sense, *i. e.*, authoritative raw materials of judicial decision—should be recognized. Their history should be traced as we trace the history of legal precepts. Their operation in action should be studied as we study the operation in action of legal precepts. In the past philosophical jurisprudence has been concerned with the ethical and philosophical bases of legal institutions and legal precepts and the principles and method of criticism of legal institutions and precepts with reference to those bases. Today we should be employing philosophical method in jurisprudence to set off and criticize the ideal element in systems of developed law, to organize that element, as in the last century we organized the precept element, to give it definiteness, and to work out a critique no less assured and thorough than that to which the apparatus of rules and doctrines has long been subjected." Pound, *The Ideal Element in American Judicial Decision* (1932) 45 HARV. L. REV. 136, 147-148. See also Pound, *A Comparison of Ideals of Law* (1933) 47 HARV. L. REV. 1. See, discussing this point in passing, Hardman, *Public Utilities. I. The Quest for a Concept—Another Word* (1934) 40 W. VA. L. Q. 230.

things strictly legal, the teacher rarely takes time out to attempt to inculcate, except perhaps by "platitudinous exhortation", a knowledge of the subtle social responsibilities that constitutes an essential part of the student's qualifications for practice—essential, that is, if the lawyer's profession is to remain a "useful and worthy institution".

Summarizing various stages of legal education, and stressing some current efforts at improvement, Mr. Justice Cardozo has recently said:

"At first, law was taught even at the colleges unimaginatively. It was a thing to be learned by rote from text books whose pronouncements were to be accepted as an act of faith. Then it was taught scientifically, but still unimaginatively. That was the era of the case books, an era of undivided hegemony now drawing to a close. We are looking beyond that now, to something higher and finer. We are trying to teach law and to study it scientifically, and yet imaginatively too,—feeling our way to a new sense of its significance, of the forces that have brought it into being, of the processes that are keeping it alive, and of the ends that it must serve and foster if its high potencies are not to fail."¹²

It does not fall within the purview of this article to spell out what the writer believes to be a programme of instruction and a technique of teaching that would be most conducive to minimizing the evils herein indicated, for example, the not-infrequent existence in the courtroom of the atmosphere of a mere contest. But, in passing, perhaps we may stop to ponder how common it has been, in most law schools, to allow a classroom discussion of a point to develop (without reference to social or economic background—in *vacuo*, as it were) into exactly the sort of thing that we condemn in the courtroom as a mere contest of wits; and how common it has been, in these schools, for an instructor, in the process of "discovering" the law of a case, to focus his attention on the "strictly legal" elements that influence courts in their decisions and to apply those elements, logically rather than sociologically, without accent on accepted ideals, and with little or no stress on the function of the court in bringing the law, interstitially and in the long run, into harmony with changed economic and social conditions. Is it not conducive to a mere contest in the classroom and, ultimately, in the courtroom, and is its not conducive to an unrealistic legal

¹² Cardozo, *Law and the University* (1931) 47 L. Q. REV. 19.

philosophy if the classroom determination of the rationale of a case does not turn now and again around the salutary implications of the doctrine of *ex facto jus oritur*? And if this doctrine plays a role in the judicial process, might it not be well, if we are to be realists, to integrate (as a few schools are doing)¹³ a certain amount of economic and social material into our teaching? And, to the ends herein indicated, particularly in view of the fact that the most important thing about any man is his philosophy, might it not be well also to inculcate, partly through a required course in jurisprudence,¹⁴ a less legalistic and a more social philosophy of law?

¹³ No attempt is herein made to catalogue the more or less avowed departures from the "standard" method. One of the most interesting of these departures is that which is being tried out at the University of Minnesota Law School. In an address delivered in 1936 before the Association of American Law Schools, Dean Fraser, in outlining the Minnesota plan, said (in part): "The course that we are trying to develop in the University of Minnesota is based on our conception of (1) the lawyer's functions in society; (2) how he is falling short in the performance of those functions; (3) how the law schools have failed to train him for those functions; and (4) how this failure may possibly be remedied . . . we conceive the lawyer to be an engineer of society. His function may be described under three heads: (1) client care taking; (2) improving the law and the legal machinery; (3) providing governmental and community leadership. . . ."

"Instead of making advanced work in the social sciences a prerequisite for law, we are making law a prerequisite for advanced social science. The social sciences are taught in the colleges in a theoretical fashion without regard to existing conditions. The lawyer's job is to apply them to existing conditions, and for this purpose he should study them after he knows the existing law and institutions."

¹⁴ If a course in "jurisprudence" is required for the ordinary professional degree, it should, no doubt, be modeled along somewhat different lines from the course that is offered in many schools and designed primarily for graduate students. Whether jurisprudence be thought of as Holmes thought of it, merely as "law in its most generalized part" [Holmes, *The Path of the Law* (1897) 10 HARV. L. REV. 457, 474], or whether one prefers to think of it as comprehending something more, no reason is perceived why, in dealing with the problems of "application and enforcement of law", special stress should not be put upon the lawyer's function in the administration of justice and upon his consequent duty to society. Nor, to give only one more illustration, is any reason perceived why, in dealing with the problems of "sources of law and modes of growth", particular emphasis should not be put upon constructive legal reform as a means of supplying the new premises that are needed now and again in our law. In short, no reason is perceived why the course could not be taught so as to put, largely by indirection, a recurring emphasis upon what is believed to be the most pressing challenge that confronts the law schools today.

But, regardless of where one puts the chief stress in a course in jurisprudence, if a trial is to be a judicial inquiry into the truth, conducted, as far as may be, according to scientific methods and with a view to securing the most important interests involved in the controversy, with a minimum sacrifice of interests, is a law school doing its duty to the student and to society if it does not require a thorough understanding of the matters that are, or should be, comprehended in such a course?

But these questions are not intended as an outline by indirection of a proposed programme; they are suggested rather as illustrative questions that are to be pondered and answered in determining how the coming generation of lawyers may be imbued with a legal philosophy that may tend to minimize the ills that now confront us not only in the courtroom but in the economic and social world as well.

To be sure, it cannot be demonstrated that the kind of law school instruction that has in general been in vogue in most law schools for the past few decades has been an active cause of the ills that confront the profession; and no such demonstration is herein attempted. But, on any theory of probabilities, and taking human nature as we find it, it should be too clear to justify discussion that that kind of instruction has been an excellent background, if not breeding ground, for what has actually happened. And it should be equally clear that, unless human nature is so changed that the bough no longer inclines the way the twig is bent, law schools, manned by competent teachers who are keenly alive to the need, can in the long run, and with the coöperation of the bar, regain much that has been given up. It is true that attempts in recent years to solve the problem in part by compulsory courses in legal ethics have fallen quite short of that "consummation devoutly to be wished". Moreover, one would be an optimist indeed if he believed that there is a law-school panacea or any other panacea for these ills. In this non-Utopian world, only a realistic attempt to control, as far as may be, the inevitable tendencies under existing conditions is worthy of consideration. But largely by indirection, often the most effective method of instruction, knowledge of a lawyer's responsibility to society may be instilled, in the interstices as it were, in every activity of the law schools;¹⁵ it may be inculcated, without pedagogic preachment, in every course that the law schools offer; it may be spelled out, for example, in terms of securing the various interests—individual, public or social—involved in given situations; it may, consequently, at least if further evidenced as hereinafter advocated, be made a part of every applicant's qualifications for admission to practice.

But, as already intimated, this part of a lawyer's education is not the task of the law schools alone. Conceding, as we must, that the conditions of effective legal training by the apprenticeship method,

¹⁵ Cf. Simpson, *supra* n. 1, at 1082.

without formal instruction, no longer exist in the United States, it does not follow, as seems to have been generally assumed for a generation or so, that apprenticeship training (which unquestionably has certain advantages that cannot be obtained in a law school) should be given up entirely. And it is believed that even under present and probable future conditions (which, it must be admitted, are none too promising), an integration of a law-school training with a post-law-school apprenticeship of at least one year would offer great possibilities for minimizing the inescapable shortcomings in legal education and in the legal profession.

For one thing, while a law school, properly conducted, is doubtless the best place in which to pursue most phases of legal education, including an introduction to the technique of legal thinking, it is generally admitted, or at least rarely denied, that an adequate training in what may be called the arts of practice can hardly be given in the schools.¹⁶ For a considerable period (generally at least a year) after a student is graduated from a law school, it is hardly fair to the public to hold him out as adequately qualified (without some clinical experience in the arts of practice) to protect any and all interests of clients, not to mention the often subtler and more complex interests of society that may run counter to those interests. The medical profession recognizes the corresponding evils in its field, and accordingly in many states, including West Virginia, it requires an internship before the medical neophyte is permitted to try his "knowledge" on the public.¹⁷ Why should not the legal profession take a leaf from the book of medical experience and recognize the protection — protection to the young lawyer, to the profession and to society — that lies in a legal internship superimposed upon and perhaps integrated with law-school training?¹⁸

¹⁶ See Gardner, *supra* n. 5, at 803.

¹⁷ See Medical Licensure Statistics for 1935, Table 7.

¹⁸ To a limited extent some experiments along this line have already been made. For example, on March 15, 1933, the New York Court of Appeals promulgated the following rules: "*Ordered*, That . . . 2. Every applicant, before being admitted to the bar, except in the case of a person entitled to admission in the discretion of the Appellate Division, as provided in Rule II, or a graduate of a college or a university, approved by the State Department of Education, shall be required to serve a regular clerkship in the office or under the immediate supervision, direction or advice of a duly registered attorney, admitted to practice before the Supreme Court of the State, for at least one year.

"3. A fourth year of attendance at an approved law school after the successful completion of a prescribed three year course, shall be accepted as a substitute for the clerkship prescribed for non-college graduates, provided,

The question naturally arises, of course, whether such an integrated or unintegrated apprenticeship is practicable — whether, for example, a suitable number of practitioners (selected, say, in coöperation with committees of the state and local bar associations) could be found who are willing to take effective part in such a programme. The answer probably lies largely in the ability of the schools and of the bar associations to bring home to the profession the grave consequences to it and to society that can be avoided, to a very considerable degree at least, by adopting such a course.

Perhaps the most palpable shortcoming, from the point of view of the law schools, is the inherent inability of the schools, under present conditions, to devise an effective means of determining a student's qualifications for practice other than the possession of what may be called a "theoretical" (though high) standard of skill in the use of rules and other legal tools, including a certain aptitude (again existing in "theory" for the most part) in the technique of legal thinking. No doubt, the graduate of a first-rate law school today is going out into practice with a better strictly legal knowledge than ever before in the history of the schools. But what can he actually do with these legal tools and this technique of legal thinking when he is confronted in the courtroom or in the office with a complex and perhaps novel set of economic and social facts? And, what is still more important for present purposes, how far can he be counted upon, without a period

however, that a prescribed graduate course of instruction be offered for such year and successfully completed by the applicant.

"6. Except as above indicated, no application will be entertained by the Court either for the filing of a certificate of commencement of clerkship or law study nunc pro tunc, or for an order dispensing with a clerkship.

"9. This rule shall take effect June 1, 1933, and shall apply to all applicants for admission to the bar or to the bar examinations after that date." (1933) 5 N. Y. STATE BAR ASS'N BULL. 137.

For some account of another experiment and for some recommendations in regard to the general problem, see Appel, *The Pennsylvania System* (1933) 7 AM. L. SCHOOL REV. 928.

In his presidential address delivered to the Society of Public Teachers of Law at its annual meeting, held at the University of Oxford, July 11, 1931, Mr. A. E. W. Hazel said:

"It is much to be desired, also, for the Bar as now for the solicitor branch of the profession, legal education should, as a matter of course, be supplemented or accompanied by legal training. I would make a period in chambers as compulsory before call to the Bar as is the serving of articles before admission as a solicitor. Any cases of hardship could be met by dispensation. This practical training should be tested . . . so as to ensure that the newly-called barrister is at least as well fitted for the practical duties of his profession as the newly-qualified medical man." Hazel, *Law Teaching and Law Practice* (1931) 47 L. Q. REV. 502, 508.

of apprenticeship guidance, to uphold the salutary traditions of the profession? And without such a period of guidance and observation, how can we obtain a satisfactory assurance that the applicant for admission to practice has those more or less unteachable and imponderable qualities which we call character and that he possesses, in consequence, a devotion to his calling as a public profession — qualities which should constitute the *sine qua non* of every applicant's qualifications?

It should need no argument to show that these qualities can best be judged not alone by written examinations, whether given by law schools or by boards of bar examiners, or by both. Nor will evidence as to character, observable in the law schools, furnish sufficient data for final judgment.¹⁹ There should be, in addition, in order that these qualities may be adequately ascertained, a post-law-school apprenticeship period of training and observation, and to the extent that may be feasible, a post-law-school proof of possession of these qualities before the student is finally graduated into the full-fledged status of a lawyer.

Of course such a scheme, if it is to afford any promise of success, must have the coöperation and the whole-hearted coöperation of the bench and bar. Moreover, if this coöperation is to be fully effective it must, in all probability, be the coöperation of an integrated bar in which every member of the profession can be required to share his measure of responsibility.²⁰ And, finally, in order to make such a scheme workable, the bar examinations (which should be taken by all law students and should be given in coöpera-

¹⁹ Cf. Wickersham, *Character Training of Law Students from the Point of View of the Law Schools and the Bar* (1936) 8 AM. L. SCHOOL REV. 602, 605: "If the law schools would be willing to undertake the responsibility of affirmative approval of the applicant's character, a noticeable improvement would undoubtedly be effected."

Unquestionably much valuable evidence may be obtained by observation and otherwise during the period of law school study, especially if the programme of instruction be directed, as it should be, toward a greater emphasis upon a lawyer's social responsibilities. Then, too, more effective machinery should be put into operation by way of determining character qualification for admission to the law schools. For one thing, the applicant should be required to submit *satisfactory* letters of recommendation as to his character qualifications.

²⁰ See, in general, Atwood, *Objectives and Methods of Bar Integration* (1934) 20 A. B. A. J. 203. See, advocating an integrated bar for West Virginia, Hugus, *An Integrated Bar* (1936) 43 W. VA. L. Q. 10.

tion with the law schools)²¹ should be held not at the end of the period of law-school study but at the end of the apprenticeship; and as a condition precedent to taking these examinations there should be *substantial* evidence, not a mere *pro forma* certificate of good character, that the applicant has shown during such apprenticeship and during the period of law school study that he can be counted upon to uphold the essential traditions of his calling.

This then is the challenge which confronts the law schools. It is equally a challenge which confronts the legal profession. It is a challenge which must be met courageously and with determination, if the profession is to be restored, as far as may be, to its rightful influence in bringing the law into harmony with changing economic and social conditions and in making law, in fact and in the mind of the layman, an effective and satisfactory means of social control.

²¹ See, advocating such cooperation in giving bar examinations, Report of Committee on Bar Admissions, Association of American Law Schools, Program and Reports of Committees for 1936, at 96-98. That report includes the following recommendations:

"Your Committee, believing that the work of the bar examiners is but a continuation of the process of legal education and that the establishment of sound legal training and adequate tests for admission to practice are common objectives and the joint responsibility of the examiners and the law schools, makes suggestions and recommendations as follows:

"(1) We recommend that there be created in each state, where one does not already exist, a Joint Advisory Committee composed of representatives of bar examiners and the law schools. The committee shall serve in an advisory capacity to each group represented and function as a clearing house for the exchange of information about the practices, policies and objectives of each group in matters affecting legal education.

"(2) We recommend that the Joint Advisory Committees give special consideration locally to the following problems:

"(e) Desirability and practicability of taking into account other factors than the examination grade in determining the right to practice. (E.g., college and law school records.)"